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 26 Lucent Technologies Inc. and  
 27 Alcatel-Lucent, S.A.

28 UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

21 SANDISK CORPORATION,

22 Plaintiff,

23 vs.

24 LUCENT TECHNOLOGIES INC. and  
 25 ALCATEL-LUCENT, S.A.,

26 Defendants.

No. C 07-03618 JF

**STIPULATION AND REQUEST FOR  
 ORDER STAYING ACTION**

27 AND RELATED COUNTERCLAIM  
 28

C 07-03618 JF

STIPULATION AND REQUEST FOR ORDER STAYING ACTION

1 Plaintiff SanDisk Corporation ("SanDisk") and defendants Lucent Technologies  
2 Inc. and Alcatel-Lucent S.A. (collectively "Lucent") hereby stipulate as follows:

3 WHEREAS, on October 12, 2007, Lucent filed a Motion to Dismiss Without  
4 Prejudice or Stay Pending Resolution of Appeal in Related Case,

5 WHEREAS, on November 30, 2007, and on February 15, 2008, the Court heard  
6 argument from the parties related to Lucent's Motion, and requested that the parties meet and  
7 confer to discuss whether they could reach an agreement under which this action could be  
8 stayed,

9 WHEREAS, pursuant to the Court's request, the parties have been negotiating the  
10 terms under which SanDisk would consent to a stay of this action, and

11 WHEREAS, the parties have reached an agreement that will allow SanDisk to  
12 consent to a stay of this action.

13 THEREFORE, the parties stipulate as follows:

14 **I. DEFINITIONS:**

15 "Lucent" shall mean Lucent Technologies, Inc., Alcatel-Lucent S.A., their  
16 subsidiaries and all predecessors and assigns.

17 "Lucent Patents" shall mean U.S. Patent No. 5,341,457, U.S. Patent No.  
18 RE39,080 and all predecessor patents and all patents issuing from all corresponding reissue,  
19 reexamination, divisional, continuation and continuation-in-part applications

20 "SanDisk Media Players" shall mean all past and current digital media players,  
21 and all natural evolutions, derivatives or updates to such players, manufactured, sold or offered  
22 for sale by SanDisk capable of storing or playing digital music files recorded in accordance  
23 with the MP3 standard.

24 "Termination Date" shall mean the date on which all of the issues currently on  
25 appeal, except those specifically related to damages, in the "Group 2: Audio Patents" portion of  
26 the case captioned *Lucent Technologies, Inc., et al v. Gateway, et. al.*, Appeal Nos. 2007-1546,  
27 -1580 are fully and finally resolved, including exhaustion of all appeals, re-trials, or other  
28 proceedings of any kind.

1 "SanDisk Parties" shall mean SanDisk, SanDisk's direct or indirect suppliers,  
2 SanDisk's distributors, resellers and direct and indirect customers and any other person who  
3 sells, offers for sale or uses any SanDisk Media Player.

4 **II. AGREEMENT:**

5 1. Waiver of damages. Lucent waives its right to seek past damages,  
6 including claims for enhanced damages or attorneys fees, from the SanDisk Parties for direct or  
7 indirect infringement of the Lucent Patents by the SanDisk Media Players. Lucent's waiver  
8 shall include all past damages and any damages that accrue through nine months after the  
9 Termination Date.

10 2. Covenant Not to Sue. Lucent covenants not to sue the SanDisk Parties for  
11 any claim for direct or indirect infringement of the Lucent Patents by the SanDisk Media  
12 Players from the date of this Agreement until nine months after the Termination Date.

13 3. Waiver of right to seek injunctive relief. Lucent forever waives its right to  
14 seek injunctive relief against the SanDisk Parties based on direct or indirect infringement of the  
15 Lucent Patents by the SanDisk Media Players.

16 4. Stay of Lawsuit. In consideration for Lucent's agreements set forth above,  
17 SanDisk consents to a stay of the case captioned *SanDisk Corporation v. Lucent Technologies,*  
18 *Inc.*, Case No. C07 03618 JF, currently pending in the United States District Court for the  
19 Northern District of California until nine months after the Termination Date.

20 SO STIPULATED  
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1 DATED: March \_\_\_, 2008

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3 Bingham McCutchen LLP

4  
5 By: \_\_\_\_\_  
6 Gregory L. Lippetz  
7 Attorneys for Plaintiff/Counter-Defendant  
8 SanDisk Corporation

9 DATED: March \_\_\_, 2008

10 Kirkland & Ellis LLP

11  
12 By: \_\_\_\_\_  
13 Jenny N. Lee  
14 Attorneys for Defendants/Counter-Plaintiffs  
15 Lucent Technologies Inc. and  
16 Alcatel-Lucent, S.A.

17  
18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 DATED: \_\_\_\_\_

20 By: \_\_\_\_\_  
21 THE HONORABLE JEREMY FOGEL  
22 UNITED STATES DISTRICT JUDGE  
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